



## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

151 WEST HARRISON STREET, BOX 2, JOLIET, ILLINOIS 61706

THOMAS A. SKINNER, DIRECTOR

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	Chapter 11
	Case No. 01 B 06301
R. LAVIN & SONS, INC.,	
	Hon. Ronald Barliant
Debtor.	

PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF  
THE UNITED STATES DEPARTMENT OF THE NAVY, THE UNITED STATES  
DEPARTMENT OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT  
OF COMMERCE

1. This Proof of Claim is filed by the Attorney General of the United States at the request of the United States Department of the Navy (the "Navy"), the United States Department of the Interior ("DOI"), and the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA"). The Attorney General is authorized to make this Proof of Claim on behalf of the United States. This Proof of Claim relates to environmental liabilities of R. Lavin & Sons, Inc. ("Debtor"), to the United States under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, as well as damages for injury to, destruction of, or loss of natural resources under Section 107 of CERCLA, 42 U.S.C. § 9607, with respect to portions (further identified below) of the Naval base known as Naval Training Center Great Lakes ("NTC") which is located across from the Debtor's

US EPA RECORDS CENTER REGION 5



400205

plant and related facilities in North Chicago, Lake County, Illinois.

**Description of Debtor's Processes**

2. The Debtor is a secondary refiner-smelter of non-ferrous metals and is one of the largest North American secondary smelters and refiners of copper-based alloys. It produces approximately 100 tons of bronze and brass ingots per day. Debtor utilizes pure copper, zinc, tin and babbitt (an alloy composed partially of antimony) in its processes as well as scrap brass, bronze, and copper. Since at least 1941, the Debtor has conducted its operations on property and at facilities located at 2028 South Sheridan Road, North Chicago, Illinois (the "Plant")

3. Hazardous wastes are generated at the Plant by furnace clean-outs and furnace dismantlings, flue dust collection, and contact cooling water treatment. The Plant contains slag heaps of waste and other materials generated from its smelting and refining processes. Several of these piles are exposed to rainfall.

4. The Debtor uses a substantial amount of water at the Plant for direct ingot cooling, smoke spray towers, flue trail dumpers, press heat exchanges, zinc die cast molds, cupola water jackets and cupola slag granulation. A portion of this water is from stormwater collected on its property through two open containment ditches. Process water is reused through a filtration system and is to undergo wastewater treatment. Water that is collected but not utilized in its processes is discharged off site from these ditches and eventually flows through NTC. There is a cross-tie in Debtor's water system between the process water circulation process and the stormwater system that enables contaminated process water to infiltrate one of the stormwater ditches. Debtor discharges

approximately 8.9 million gallons of water through NTC each year. [COMPARE WITH FIRST FLUSH STUDY].

**Effect of Debtor's Discharges and Disposals on NTC**

5. Water discharged by the Debtor exits the Plant via a North Chicago storm sewer that empties into Pettibone Creek (the "Creek"), a tributary to Lake Michigan. Before discharging into the Lake, the Creek flows through a natural wildlife area, a boat basin, an inner harbor and an outer harbor at NTC. The boat basin, inner harbor and outer harbor shall be collectively referred to as the "Harbor."

6 Both the Creek and the Harbor are designated as impaired waterways by the Illinois Environmental Protection Agency ("IEPA") in its 2000 Water Quality Report. The condition of the Creek and Harbor is directly attributable to Debtor's operations, which have been in violation of applicable environmental laws and regulations and the Consent Order (hereinafter defined).

a. In a report dated June 6, 1990, IEPA's Water Planning Section determined that the Debtor's discharges into the Creek had adverse effects on water quality, especially in the Creek and Harbor sediments which are highly contaminated with zinc, copper, and lead.

b. In 1990, the State of Illinois sued the Debtor for violations of environmental law, including the Clean Water Act (33 U.S.C. § 1251 et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.). As a result of this lawsuit, the Debtor operated under a consent decree (the "Consent Order") from October 1990 until September 2000.

c. The Debtor operated in violation of the Consent Order. In 1991, the North Shore Sanitary District ("NSSD") reviewed stormwater data for a proposed sanitary sewer connection with the Plant. NSSD found that three of the Debtor's four water outfalls, all of which eventually discharge into the Creek, contained stormwater contaminated with levels of copper, lead, and zinc that exceeded NSSD's local limits and applicable Illinois Water Quality Standards.

d. In April 1994, IEPA's Division of Land Pollution Control performed extensive sediment sampling of the Harbor as part of an expanded site inspection under CERCLA (the "1994 Study"). This 1994 Study compared sediment concentrations of certain metals upstream from the Debtor's outfall into the Creek with those downstream from the outfall with the following results:

- i. Copper increased from 106 mg/kg to 2530 mg/kg (an increase of 2387%).
- ii. Lead increased from 46.8 mg/kg to 1840 mg/kg (an increase of 3932%).
- iii. Zinc increased from 614 mg/kg to 17000 mg/kg (an increase of 2769%).
- iv. The Plant was the primary source for concentrations of copper, lead, and zinc in the Creek.
- v. The Debtor has been an apparent source for beryllium, chromium, iron, manganese, and nickel in the Creek sediments.
- vi. When, in accordance with IEPA guidelines, the Creek's

sediment concentration levels were compared to "*Guidelines for the Protection and Management of Sediment Quality in Ontario*," concentrations were found to be greater, than the "Severe Effect Level," for copper, lead, manganese, mercury, lead, and zinc

e On November 15, 1996, IEPA's Division of Water Pollution Control, conducted an inspection of the Plant and found that the Debtor continued to fail to operate within the Consent Order and its NPDES permit and that it inadequately managed storm water, groundwater, and wastewater at the Plant. Among other findings, IEPA reported that the Debtor's actions had contaminated rainfall, caused 130,000 gallons of contaminated process water to leak into a storm water containment ditch, and resulted in approximately 50,000 gallons of the metal laden wastewater to discharge off site and eventually onto NTC.

f. In December 1998, the Debtor discharged approximately 100,000 gallons of contaminated process water from its Plant due to a major power failure. This water made its way to the Creek, Harbor and other affected areas at NTC. The Debtor has acknowledged that infiltration of this process water to the storm water system is attributable to a cross-tie between the process water line and a storm water line under the floor of its furnace building.

g. As documented by IEPA, the Debtor has discharged process water to NTC on other occasions via the stormwater outfalls at the Plant.

h. A December 2000 inspection report from IEPA indicates that, because of a decline in the Debtor's business in the last few years, the Debtor is utilizing less of the stormwater collected and contaminated on its property in its processes and

therefore is discharging more water to NTC. As a result, the Debtor's discharges to, and contamination of, property at NTC is increasing. According to the report, Debtor's increased discharges have resulted in a 205% increase in the amount of copper, a 56% increase in the amount of lead, and a 58% increase in the amount of zinc discharged by the Debtor in its effluent between 1997 and 1998. The report also noted increases in cadmium, nickel and boron in the Debtor's effluents. This indicates that the contamination in the sediments reported above has increased as a direct consequence of Debtor's actions.

#### **CERCLA**

7. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the Debtor is liable to the United States with respect to releases and threatened releases of hazardous substances at NTC. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that four separate categories of persons are liable to the United States with respect to releases and threatened releases of hazardous substances, including:

- (1) the owner and operator of a vessel or a facility.
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of.

42 U.S.C. § 9607(a)(1), (2).

8. Debtor has owned and operated the Plant since at least 1941 and is the present owner and operator. Debtor has discharged contaminated effluent into the Creek contributing to contamination at NTC. Further, the Debtor is a successor in interest to the

prior owners and operators of the Plant that discharged contaminated effluent into the Creek. The Plant is a "Facility" as that term is defined in Section 11(9) of CERCLA, 42 U.S.C. §9601(9). There have been releases or threatened releases of copper, lead, zinc, beryllium, chromium, iron, manganese, and nickel among other metals, all of which are hazardous substances under CERCLA, from Debtor's Plant onto NTC. Response costs will be incurred by the United States at NTC not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. § 300, as amended.

9. As the owner or operator of the Plant, now and at the time of the disposal, and the successor in interest to certain other owners and operators of the Plant at the time of the disposal, the Debtor is liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to releases or threatened releases of hazardous substances at or from the Plant. Other potentially responsible parties may, along with the Debtor, also be jointly and severally liable to the United States under CERCLA with respect to NTC.

10. Past Costs. In response to the releases and threatened releases of hazardous substances at NTC and downstream of Debtor's Plant, the United States has incurred "response costs" within the meaning of Sections 102(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a) IN THE FORM OF TESTS AND STUDIES. NEED THIS NUMBER. The United States files a claim for such costs in the amount of \$\_\_\_\_\_, plus interest. Other potentially responsible parties may, along with the Debtor, also be jointly and severally liable to the United States under CERCLA with

respect to these costs.

11. Future Response Obligations. Additional response activities at the Debtor's Plant and downstream of Debtor's Plant are anticipated for which the Debtor is liable. Because there is not yet a Record of Decision ("ROD") selecting a remedy to address the release and threatened release of hazardous wastes at NTC, and more specifically downstream of Debtor's Plant [WE NEED TO HAVE NOAA/DOI ESTABLISH A DOWNSTREAM NUMBER], the ultimate response cost is not known with precision. The United States presently estimates that the cost of implementing a response action with respect to Debtor's Plant and area downstream will be between \$10,000,000.00 and \$15,000,000.00. This Proof of Claim is filed for this liability. Other potentially responsible parties may, along with the Debtor, also be jointly or severally liable to the United States under CERCLA with respect to the costs of future response actions at NTC.

#### **Natural Resource Damages**

12. The Debtor is also liable to the United States under Section 107 of CERCLA for injury to, destruction of, or loss of natural resources at NTC for which the President is authorized to act on behalf of the public as trustee of such natural resources to recover such damages, including the reasonable costs of assessing such injury, destruction or loss. 42 U.S.C. § 9607. Injured resources include, but are not limited to, birds, mammals, fish and other wildlife, plants and their habitats at or near NTC. As no remedial action has been completed, the eventual amount of natural resource injury, destruction or loss, including the reasonable costs of assessing the existence and extent of



such injury, destruction or loss, is unknown. However, the United States estimates that the aforementioned damages are between \$360,000.00 and \$500,000.00 [BOB, DID WE DETERMINE WHAT NUMBER WE COULD USE FOR DEPRIVATION OF RECREATIONAL USE?]. Additionally, to date, the United States has incurred approximately \$\_\_\_\_\_ [PLEASE SEE IF WE CAN COME UP WITH THIS NUMBER] in costs associated with assessment of the natural resource damages at NTC. This Proof of Claim is filed for this natural resource damages and assessments costs as well. Other potentially responsible parties may, along with the Debtor, also be jointly and severally liable to the United States under CERCLA with respect to natural resource damages at NTC. [NOTE: DOI AND NOAA NEED TO GIVE US NUMBERS IF THIS NRD CLAIM IS TO ENCOMPASS AREAS BEYOND NTC.]

**Miscellaneous Provisions**

13. No administrative or court judgment has been rendered on this claim.

No payments have been made by the Debtor on this claim.

14. This claim reflects the known liability of the Debtor to the United States.

The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the Debtor by any federal agency.

15. The United States has not perfected any security interest on its claim against the Debtor.

16. This claim is filed as a general unsecured claim, except that administrative priority may be sought at the appropriate time with respect to response actions for

releases or threats of releases at or from property of the Debtor's estate. This Proof of Claim is protective in nature as to any injunctive obligations of the Debtor. Certain statutory and regulatory obligations of the Debtor are mandatory injunctive obligations that are not dischargeable claims within the meaning of Section 101(j) of the Bankruptcy Code. Nevertheless, this Claim is filed in a protective fashion to protect the United States' rights with respect to such injunctive obligations. Nothing in this Proof of Claim constitutes an election of remedies or a waiver of any rights of the United States.